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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/516,781

12/03/2004

Silvio Aime

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EXAMINER

JONES, DAMERON LEVEST

ART UNIT

PAPER NUMBER

1618

MAIL DATE

DELIVERY MODE

12/07/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/516,781	Applicant(s) AIME ET AL.	
	Examiner D L. Jones	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-9,11-13 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) 9,11,12 and 17-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,8 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/12/09</u> . | 6) <input type="checkbox"/> Other: _____ |

ACKNOWLEDGMENTS

1. The Examiner acknowledges receipt of the amendment filed 11/12/09 wherein claims 1 was amended and claims 6, 10, 14-16 were canceled. In addition, the Examiner acknowledges receipt of a request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/12/09 has been entered.

Note: Claims 1-5, 7-9, 11-13, and 17-19 are pending.

RESPONSE TO APPLICANT'S AMENDMENT/ARGUMENTS

2. The Applicant's arguments and/or amendment filed 11/12/09 to the rejection of claims 1-5 and 13 made by the Examiner under 35 USC 103 have been fully considered and deemed persuasive because Applicant has amended the claim to overcome the rejection. Therefore, the said rejection is hereby withdrawn.

WITHDRAWN CLAIMS

3. Claims 9, 11, 12, and 17-19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention/species.

NEW GROUNDS OF REJECTIONS

New Matter Rejections

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-5, 7, 8, and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In Applicant's response filed 11/12/09, it is set forth that support for the amended claims may be found throughout the specification, but particularly in paragraphs [0040] and [0070] and Examples 1-11. However, review of the specification does not provide support for the claims as amended. For example, paragraph [0040] (see PGPub 2005/0175543) discloses that 'the number of nutrient or pseudo-nutrient molecules N (i.e., $p = 1$, $m > 1$, $n = 0$ or an integer $\leq m$)' which is not consistent with the phrase 'wherein when n is not 0, $m \geq p$ and $n \leq m$ ' that appears in the amended claims (see independent claim 1). In addition, paragraph [0070] and the Examples were reviewed. Still, the Examiner did not find support for the amended claims. Thus, Applicant is reminded that one cannot arbitrarily select endpoints or generate expressions/equations without support being provided for in the specification. Hence, Applicant is respectfully requested to point to the page and line number(s) or paragraph(s) wherein the phrase 'wherein when n is not 0, $m \geq p$ and $n \leq m$ ' is specifically set forth.

112 Second Paragraph Rejections

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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7. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8: The claim as written is ambiguous because it is unclear what organic group Applicant is referring to that may be assigned to the variables R and R1 that are compatible with the instant invention. In addition, regarding claim 8, the phrase "and the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "and the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

COMMENTS/NOTES

8. The lined through documents appearing on the information disclosure statement filed 11/12/09 had no English translation/equivalent present in the file at time the disclosure statement was reviewed.

9. It should be noted that once the new matter rejection is successfully overcome, the allowable product claims will be rejoined with the process and method of use claims. In other words, the products of independent claim 1 will be rejoined with the process and method of use disclosed in claims 9, 17, and 18. Thus, Applicant is respectfully requested to review claims 9, 17, and 18 for possible 112 first and second paragraph rejections. However, Applicant is respectfully requested to cancel the non-elected subject matter (claims 11, 12, and 19).

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D L. Jones whose telephone number is (571)272-0617.

The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D L. Jones/
Primary Examiner
Art Unit 1618

December 3, 2009